

1 of business before we, before we leave the Scripps Howard case
2 is to receive into evidence at this time, and I'm instructing
3 the reporter to mark for identification as of today, October
4 6th, and to receive into evidence today, October 6th, the, the
5 exhibits which have been premarked, Scripps Howard Exhibits 4,
6 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,
7 22, 23, 24 and 25 which was added this morning which is the
8 Stipulation of Broadcast Interests. All of these exhibits, 4
9 through 24, are self-evident and they pertain to the sworn
10 statements of non-party public witnesses, as to which Four
11 Jacks has waived depositions and the right to cross-examine,
12 and it's established into the law of the case now that these,
13 these witnesses will not need to appear for questioning or
14 cross-examination in this case unless specifically ordered
15 otherwise upon a request in writing.

16 (The documents that were referred to
17 as Scripps Howard's Exhibits No. 4
18 through 25 were marked for
19 identification and entered into
20 evidence.)

21 MR. GOLDSTEIN: Your Honor, for the record, I think
22 you should note that the Bureau has also indicated that it has
23 no need to cross-examine none of the parties' witnesses.

24 JUDGE SIPPEL: The record will so reflect that this
25 ruling is with the, with the concession of the Bureau that

1 they also have no need or desire to question any of these non-
2 public -- I'm sorry, the public non-party witnesses. Then
3 that concludes the, the document submission for Scripps Howard
4 and we're going to now recess until 25 minutes after 2:00 and
5 then we'll pick up with the Four Jacks' testimony. Thank you.

6 (Off the record.)

7 JUDGE SIPPEL: Are you ready to go then, Ms.
8 Schmeltzer?

9 MS. SCHMELTZER: Yes, we are, Your Honor. We're
10 handing an original --

11 JUDGE SIPPEL: Let's go on the record. We're on the
12 record. Go ahead.

13 MS. SCHMELTZER: We're providing the reporter with a
14 original and one copy of our exhibits, and what I suggest is I
15 just proceed to mark them all for identification?

16 JUDGE SIPPEL: We will -- I will instruct the
17 reporter to mark them for identification at this time and
18 these are what, Four Jacks Exhibits 1, 2, 3 and 4?

19 MS. SCHMELTZER: That's correct.

20 JUDGE SIPPEL: And why don't you state for the
21 record what each of them is, you know, very succinctly?

22 MS. SCHMELTZER: Four Jacks Exhibit 1 is a six page
23 statement -- six page exhibit entitled Applicant Ownership and
24 Structure accompanied by a Declaration of David D. Smith.
25 Four Jacks Exhibit 2 is the Declaration of David D. Smith

1 | which is six pages and with a declaration form. Four Jacks
2 | Exhibit 3 is the Declaration of Robert E. Smith. That's six
3 | pages with an attached declaration form. And Exhibit 4 is the
4 | Declaration of Frederick G. Smith and that's six pages with an
5 | attached declaration form.

6 | JUDGE SIPPEL: All right. The reporter will mark
7 | those for identification as you have indicated at this time.

8 | (The documents that were referred to
9 | as Four Jacks Exhibits 1 through 4
10 | were marked for identification.)

11 | JUDGE SIPPEL: Are there going to be any objections
12 | to this?

13 | MR. HOWARD: Yes, Your Honor, we have a few.

14 | JUDGE SIPPEL: All right. We'll start then with --
15 | Mr. Howard, with Exhibit 1.

16 | MR. HOWARD: Yes, sir. On the first page Applicant
17 | Ownership and Structure, three lines from the bottom, it
18 | states, "The principles of Four Jacks have timely proposed to
19 | divest." That's a legal conclusion as to whether it's timely.
20 | Timely should be struck.

21 | MS. SCHMELTZER: Well, Your Honor, it's in their --
22 | it was in the application. It was in the integration
23 | statement. It's timely. I mean, if Scripps wants to cross-
24 | examine her or argue otherwise, it can, but it's certainly
25 | timely.

1 JUDGE SIPPEL: I'm going to, I'm going to let it
2 stay that way. I'll overrule the objection.

3 MR. HOWARD: On page 2, Your Honor, the last
4 paragraph in the first section, three lines down, the first
5 paragraph beginning, "Four Jacks will install auxiliary power
6 at the proposed Baltimore station's transmitter site and main
7 studio in order to permit continuous operation in the event of
8 a power failure." That proffer is irrelevant. The Commission
9 has ruled that the -- the Commission has stated that
10 comparative consideration should not be given to auxiliary
11 power proposals for television applicants. This statement in
12 Priscilla L. Schwarer for FCC Record 2659, 1989.

13 MS. SCHMELTZER: I think that's something to be
14 argued in the proposed findings and conclusions, Your Honor.
15 This is a factual statement. It was contained in the
16 application and the weight to be given that fact can be argued
17 later.

18 JUDGE SIPPEL: I think that was -- that's the way I
19 ruled back in 1989. I think, to be consistent, I am going to
20 grant the motion and I will strike this unless you can tell me
21 the law has changed. So I'll grant the motion. I've stricken
22 it. When I say that's stricken, I mean on page 2 of Four
23 Jacks Exhibit 1 the sentence which reads, "Four Jacks will
24 install auxiliary power at the proposed Baltimore station's
25 transmitter site and main studio in order to permit continuous

1 operation in the event of a power failure."

2 MR. HOWARD: That's all in the first exhibit, Your
3 Honor. Exhibit 2, on page 2 --

4 MS. SCHMELTZER: Just a minute. Is the first
5 exhibit then received?

6 JUDGE SIPPEL: Are you prepared to move it into
7 evidence? You haven't moved it into evidence.

8 MS. SCHMELTZER: Then I'd move it into evidence,
9 right.

10 JUDGE SIPPEL: Exhibit 1 -- Four Jacks Exhibit 1 for
11 identification is received in evidence as Exhibit 1.

12 (The document that was previously
13 marked for identification as Four
14 Jacks Exhibit 1 was entered into
15 evidence.)

16 JUDGE SIPPEL: Mr. Howard?

17 MR. HOWARD: Exhibit 2, Your Honor, on page 2,
18 Broadcast Experience at the bottom of the page, "My broadcast
19 experience began." We would move to strike that as
20 conclusory, concludes the fact of what it is, broadcast
21 experience.

22 MS. SCHMELTZER: I don't understand that objection.

23 MR. HOWARD: It suggests that it's broadcast
24 experience. There's certainly some question as to whether at
25 the age of 12 accompanying one's father to a T.V. station is a

1 -- is broadcast experience.

2 JUDGE SIPPEL: Well --

3 MR. HOWARD: But -- that we would argue in cross-
4 examination, Your Honor, but it's the conclusion that this --
5 my broadcast experience began is a conclusion of the fact at
6 issue.

7 MS. SCHMELTZER: It's his testimony and I don't see
8 any problem with it.

9 JUDGE SIPPEL: Yeah. And I'd -- what is implicitly
10 unwritten there that's going through my mind is that it is my
11 testimony that my broadcast experience began at approximately.
12 I mean, that's what he was saying, but that doesn't come close
13 to establishing anything until after we go through the --
14 procedure, so I'm -- I mean, I'm going to overrule or deny the
15 objection. Anything on the next -- rest of that exhibit?

16 MR. HOWARD: Yes, just the last sentence in that --
17 on the page, Your Honor. It's the description of Julian
18 Sinclair Smith, a Baltimore broadcast pioneer. We urge
19 striking the language a Baltimore broadcast pioneer as
20 irrelevant.

21 JUDGE SIPPEL: Ms. Schmeltzer?

22 MS. SCHMELTZER: It's a true fact and it's just the
23 witness' characterization. I mean, we don't plan to make
24 findings on --

25 JUDGE SIPPEL: I've been pretty, I've been pretty

1 liberal on letting witnesses make preliminary descriptions as
2 to how they want to present themselves. With the
3 qualification and Ms. Schmeltzer's representation that they're
4 not going to seek credit for this, I will permit it and
5 overrule the objection.

6 MR. HOWARD: Yes, sir. On page -- on the next page,
7 page 3 --

8 JUDGE SIPPEL: You're still on Exhibit 2?

9 MR. HOWARD: Yes, Your Honor. The -- at the bottom
10 of the page we're describing COMARK. David Smith begins
11 testifying that he retained his interest in COMARK until 1984
12 and prior to that that he had, in fact, moved back to
13 Baltimore in 1979. Then at the bottom of the page there's the
14 statement, "During the period 1976 -- 1978 to 1986," including
15 a period after which, by his own testimony he had ceased his
16 interest in COMARK, that COMARK did certain things including
17 having a number of sales. Given that apparently he had no
18 connection with COMARK during some of this period, we urge
19 that the, that the language from during through the next four
20 lines on page 4 ending in May be -- I'm sorry, from during
21 through United States be stricken, "During the period 1978 to
22 1986 COMARK was directly involved in providing and installing
23 approximately 50 percent of the new UHF television
24 transmitters in the United States."

25 JUDGE SIPPEL: Ms. Schmeltzer?

1 MS. SCHMELTZER: Your Honor, I thought this was
2 something that --

3 JUDGE SIPPEL: I'm sorry. Did you finish, Mr.
4 Howard?

5 MR. HOWARD: No -- yes, sir.

6 JUDGE SIPPEL: Ms. Schmeltzer?

7 MS. SCHMELTZER: You know, I'm hesitant to -- I
8 don't want to re-write my client's testimony. I think this is
9 something that certainly could be clarified on cross-
10 examination. We're not claiming credit for a period that he
11 was not associated with COMARK. I think he was just trying to
12 say here what COMARK did at that period of time. I'm not in a
13 position today to tell you the dates should be 1984 or 1986
14 with respect to that during the period that, but I think this
15 could -- it's something that can be clarified on cross-
16 examination.

17 JUDGE SIPPEL: Well, with your representation that
18 you're not going to try and seek the -- a credit for that
19 period of time --

20 MS. SCHMELTZER: We're only going to seek -- I mean,
21 the only thing relevant would be when he worked for COMARK and
22 what he did.

23 MR. HOWARD: The statement goes to the sales that
24 COMARK had, providing and installing approximately 50 percent
25 of the new UHF television transmitters in the United States.

1 Certainly some -- (a) we don't know what his involvement with
2 the company was after 1979, and (b) a number of those sales
3 certainly -- presumably came in the period after he had
4 completely severed his interests, so --

5 MS. SCHMELTZER: Well, as I said, that's something
6 you can go into on cross-examination.

7 JUDGE SIPPEL: Well, you're saying that it should be
8 stricken because it's too vague an endeavor in a sense. I'm
9 going to do the same thing that I've done with some of the
10 paragraphs in the Scripps Howard. I'm just going to let this
11 come in the way it is and you can elect to either leave it and
12 argue that they haven't met their burden or you can cross-
13 examine, but I -- again, I'm not going to permit Ms.
14 Schmeltzer to clarify that unless it's on redirect.

15 MS. SCHMELTZER: Well, I assume if it's a
16 typographical error --

17 JUDGE SIPPEL: Typos are different.

18 MS. SCHMELTZER: Okay.

19 JUDGE SIPPEL: Is that a typo?

20 MS. SCHMELTZER: What I don't know is if that should
21 say '78 to '84. I just don't know that.

22 JUDGE SIPPEL: Well, then find that out and raise
23 that preliminary matter before he takes the stand.

24 MS. SCHMELTZER: Um-hum, sure.

25 JUDGE SIPPEL: The typos we'll still -- we'll work

1 with, but not context. Page -- does that conclude page 3?

2 MR. HOWARD: Yes, Your Honor.

3 JUDGE SIPPEL: Page 4?

4 MR. HOWARD: Your Honor, with the paragraph that
5 begins near the bottom of that page, "My brothers and I have
6 been greatly involved in the Baltimore community through our
7 operation of Baltimore station WBFF through the end of this
8 session," we urge that that be stricken as totally unrelated
9 to broadcast experience. Apparently, it's an untimely attempt
10 to gain some integration enhancement credit for community
11 service even though no such credit was claimed in the
12 integration statement.

13 MS. SCHMELTZER: No, we're not -- it is not
14 community service. We maintain that this is distinctly tied
15 into broadcast experience. This talks about the scholarships
16 at the station and things that they have done at the station
17 while they were working there. We are not making a claim for
18 -- independently for civic experience apart from the station.

19 MR. HOWARD: Perhaps I should note there are some
20 additional objections. There is nothing in this testimony
21 that ties the station's actions personally to the actions of
22 David Smith and that provides another basis for striking it.

23 MS. SCHMELTZER: Well, he and his brothers own the
24 stations and run the stations.

25 MR. HOWARD: The ownership of the station doesn't

1 provide broadcast experience. It's what you -- what the
2 applicant does at the station that counts for broadcast
3 experience.

4 MS. SCHMELTZER: Well, you can cross-examine him on
5 that.

6 JUDGE SIPPEL: Well, what is -- let me get this in
7 focus for myself. You say this -- is this information being
8 disclosed in the, in the integration statement, the one that
9 was exchanged?

10 MS. SCHMELTZER: We did claim broadcast experience
11 and it's our, it's our belief that this is relevant under the
12 broadcast experience criterion. We have broadcast experience
13 in the particular market involved.

14 JUDGE SIPPEL: Well, what about this reference to
15 scholarships in engineering and mathematics?

16 MS. SCHMELTZER: That's right. Those are, those are
17 scholarships that the station provides. They've been listed
18 in the EEO programs over the years, that are filed with the
19 FCC.

20 JUDGE SIPPEL: And what's -- about an essay contest
21 in Baltimore?

22 MS. SCHMELTZER: That's right. Again, that's a
23 station program.

24 JUDGE SIPPEL: Well, what's that you -- but you're
25 claiming this, you say, for --

1 MS. SCHMELTZER: It's part of their --

2 JUDGE SIPPEL: -- broadcast experience?

3 MS. SCHMELTZER: It's part of their broadcast
4 experience. If Mr. Howard wants to cross-examine or argue the
5 weight of this, he's free to do that, but we believe that this
6 is significant broadcast experience. These are things that
7 have been done through the station, not on an outside basis.

8 JUDGE SIPPEL: Well, I hear your argument on the
9 connection. It's just that the nature of these activities I'm
10 having difficulty making the nexus between broadcast
11 experience and what he does in the job. I --

12 MS. SCHMELTZER: Well, for instance, the Commission
13 in their EEO program they ask you to tell what you've been
14 doing for minorities and these scholarships have regularly
15 been listed on their EEO programs. Those are filed with the
16 FCC. I think that that's distinctly broadcast experience.

17 JUDGE SIPPEL: No. I understand the argument you're
18 making, but I still don't see the connection. The fact that
19 it happens to be disclosed in an EEO statement -- it may not
20 even have to be disclosed. That could be a voluntary
21 disclosure, that kind of an activity. I'm, I'm not going to
22 -- what does Mr. Goldstein and Mr. Zauner have to say about
23 this?

24 MR. GOLDSTEIN: Nothing. This is comparative.

25 MS. SCHMELTZER: I mean, we would be prepared to

1 | argue the law that this should be included and obviously Mr.
2 | Howard would disagree, but I think it should come in the
3 | record.

4 | MR. HOWARD: We would be prejudiced by the
5 | introduction of this evidence into the -- even as broadcast
6 | experience if it's -- if it comes into the findings in any way
7 | whatsoever because the applicant expressly waived any claim
8 | for community involvement. To let it in under this criteria
9 | would be -- and to say that we are not -- I don't believe that
10 | Scripps Howard would even have an adequate remedy in terms of
11 | being able to cross-examine because that could only open the
12 | door to further supplementing of the record with respect to a
13 | matter that the applicant had full opportunity to claim and
14 | waived.

15 | MS. SCHMELTZER: But I think Mr. Howard is --
16 | doesn't understand the point. There are two -- there are
17 | separate criteria. There's broadcast experience criteria and
18 | then there's local residence accompanied by civic experience.
19 | We are claiming broadcast experience. We've always claimed
20 | broadcast experience. They were deposed about broadcast
21 | experience. As a matter of fact, I think some of these things
22 | did come out during their depositions. I'm quite sure they
23 | did. We are claiming the local residence, but we're not
24 | claiming the civic experience that's associated with the local
25 | residence, and that's not -- that is definitely not station

1 | civic experience. That's -- that kind of civic experience has
2 | always been held to be things that are unrelated to a specific
3 | station. I mean, if -- for instance, Your Honor, if Scripps
4 | Howard can claim in its renewal showing that it should get
5 | credit for what it's -- for the organization, this management
6 | people belong to, then I don't know how Scripps Howard can
7 | argue that we shouldn't get credit for this as broadcast
8 | experience.

9 | JUDGE SIPPEL: Well, if you recall, I permitted them
10 | to do that because -- I received that evidence in order to
11 | show the competency of the witness to go about doing an
12 | assessment of --

13 | MS. SCHMELTZER: Well, I think that this similarly
14 | shows that.

15 | JUDGE SIPPEL: Well, you don't have the same burden
16 | of the same issue. I -- what I'm going to -- I'm not prepared
17 | here to go down by -- to parse out the case law versus this
18 | experience, broadcast experience. I'm very, very doubtful
19 | about it qualifying for broadcast experience, but that can be
20 | taken care of as a matter of law and I will, I will give Mr.
21 | Howard two options. Either he can just let this come in the
22 | way it is and argue it in findings or you can, you can file a
23 | motion to strike it if you want to, if you want to brief the
24 | law on it, but I'm not -- I'm just not that, I'm just not that
25 | familiar to do this from the bench with what exactly the

1 standards are that are now being applied on something like
2 this. I've never seen it come in this way. All right.
3 That's my, that's my ruling. So I'm overruling your
4 objection.

5 MR. HOWARD: That's all we had on that exhibit, Your
6 Honor.

7 JUDGE SIPPEL: Then subject to my rulings the motion
8 to receive Four Jacks Exhibit 2 into evidence is received at
9 this time and Four Jacks Exhibit 2 is now in evidence.

10 (The document that was previously
11 marked for identification as Four
12 Jacks Exhibit No. 2 was entered into
13 evidence.)

14 JUDGE SIPPEL: Four Jacks Exhibit 3?

15 MR. HOWARD: Your Honor, we have the same
16 objections. Can we just preserve those for the record with
17 respect to the -- it's identical language here on broadcast
18 experience with respect to -- beginning on page 4, precisely
19 the same language?

20 JUDGE SIPPEL: "My brother's and I have been greatly
21 involved?"

22 MR. HOWARD: Yes.

23 JUDGE SIPPEL: Is that it? Your objection is, is
24 noted and is, is preserved. Is that all that you have with
25 respect to Exhibit 3?

1 MR. HOWARD: That's all there is on that exhibit.

2 JUDGE SIPPEL: Very well. Then subject to that
3 objection Exhibit -- the motion to receive Four Jacks Exhibit
4 3 into evidence is granted and Four Jacks Exhibit 3 is
5 received in evidence.

6 (The document that was previously
7 marked for identification as Four
8 Jacks Exhibits No. 3 was entered into
9 evidence.)

10 JUDGE SIPPEL: Four Jacks Exhibit 4?

11 MR. HOWARD: The same objection on Exhibit 3, Your
12 honor.

13 JUDGE SIPPEL: Starting at page 3?

14 MR. HOWARD: Exhibit 4, Your honor. Starting on
15 page 3.

16 JUDGE SIPPEL: So noted. Anything else?

17 MR. HOWARD: That's all, Your Honor.

18 JUDGE SIPPEL: Motion granted. Four Jacks Exhibit 4
19 is received.

20 (The document that was previously
21 marked for identification as Four
22 Jacks Exhibit No. 4 was entered into
23 evidence.)

24 JUDGE SIPPEL: Does that then conclude your
25 testimony?

1 MS. SCHMELTZER: Yes, it does.

2 JUDGE SIPPEL: Then I believe that's all the
3 business that we had to conduct today. We're in recess until
4 the 8th of November and --

5 MS. SCHMELTZER: I just wondered -- the order of
6 Scripps' witnesses will be -- what will the order of the
7 witnesses be?

8 JUDGE SIPPEL: Ms. Barr comes first.

9 MR. HOWARD: Ms. Barr. Then Terry Schroeder, Arnie
10 Kleiner.

11 JUDGE SIPPEL: So it's in -- yeah. It's in the
12 order that they presented it with the exception of Ms. Barr
13 will now go first and we'll try to accommodate the, you know,
14 the advanced notice. We'll try to do all the things that we
15 promised we would try to do and we'll see what happens. All
16 right. Thank you very much. We're in recess until November
17 8th.

18 MS. SCHMELTZER: Thank you.

19 (Whereupon, the hearing was adjourned at 2:40 p.m.
20 on October 6, 1993.)

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24

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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN RE SCRIPPS HOWARD BROADCASTING COMPANY
Name AND FOUR JACKS BROADCASTING, INC.

MM DOCKET NO. 93-94
Docket No.

WASHINGTON, D.C.
Place

OCTOBER 6, 1993
Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 264 through 404, inclusive, are the true, accurate and complete transcript prepared from the reporting by ALICE WEHNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

October 18, 1993
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